

C. C. Eastern, Inc. and Local 701, International Brotherhood of Teamsters, AFL-CIO. Case 22-CA-19042

February 7, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

On April 23, 1993, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 22-RC-10594. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On November 19, 1993, the General Counsel filed a Motion to the National Labor Relations Board for Summary Judgment and memorandum in support. On November 26, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding. The Respondent alleges as affirmative defenses that it has no duty to bargain because the unit consists solely of individuals who are independent contractors and not "employees" within the meaning of the Act and that subsequent changes and additional facts took place prior to the certification of the Union which the Regional Director failed to consider and this constituted a denial of due process.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.¹ We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See

¹See *Southwestern Bell Telephone Co.*, 235 NLRB 963 fn. 2 (1978). Thus, neither the bonus system change nor the fact that two of the unit employees are alleged to have assumed entrepreneurial duties warrants additional hearing on the Respondent's unit contentions.

Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in North Brunswick, New Jersey, has been engaged in the interstate transport of commercial freight.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$50,000 for the transport of freight from the State of New Jersey directly to points outside the State of New Jersey.²

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 24, 1992, the Union was certified on January 28, 1993, as the collective-bargaining representative of the employees in the following appropriate unit:

All drivers employed by the Employer at its North Brunswick, New Jersey facility, but excluding all dispatchers, dock workers, mechanics, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since February 3, 1993, the Union has requested the Respondent to bargain and, since February 3, 1993, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

²The Respondent denies the jurisdictional facts allegation in its answer to the complaint, but admits that it is engaged in commerce within the meaning of the Act. The Board in the underlying representation proceeding affirmed the Regional Director's findings, with respect to jurisdiction, and review of that aspect of the Regional Director's decision was not requested of the Board. The Respondent does not raise any issues of jurisdiction in its response to the Notice to Show Cause. Therefore, having admitted that it is engaged in commerce but denying only jurisdictional facts which have previously been found by the Regional Director, the Respondent's denial does not warrant a hearing.

CONCLUSION OF LAW

By refusing on and after February 3, 1993, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, C.C. Eastern, Inc., North Brunswick, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local 701, International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the following appropriate bargaining unit.

All drivers employed by the Employer at its North Brunswick, New Jersey facility, but excluding all dispatchers, dock workers, mechanics, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in North Brunswick, New Jersey, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 701, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All drivers employed by us at our North Brunswick, New Jersey facility, but excluding all dispatchers, dock workers, mechanics, office clerical employees, guards and supervisors as defined in the Act, and all other employees.

C. C. EASTERN, INC.